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It was alleged in the libels that the article was adulterated, in that it consisted in whole or in part of a decomposed vegetable substance.

On April 12, 1927, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be destroyed by the United States marshal.

W. M. JARDINE, *Secretary of Agriculture.*

5111. Adulteration of grapefruit. U. S. v. 350 Boxes of Grapefruit. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 21851. I. S. No. 2658-x. S. No. C-5444.)

On or about April 2, 1927, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 350 boxes of grapefruit, at Wichita, Kans., alleging that the article had been shipped by W. E. Lee, from Thonotosassa, Fla., on or about March 23, 1927, and transported from the State of Florida into the State of Kansas, and charging adulteration in violation of the food and drugs act.

Examination of the article by this department showed that it consisted in whole or in part of frost-damaged fruit.

It was alleged in the libel that the article was adulterated, in that it consisted wholly or in part of a decomposed vegetable substance.

On April 20, 1927, the Midwest Brokerage Co., Salina, Kans., having appeared as claimant for the property and having consented to the entry of a decree, judgment of condemnation was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, conditioned in part that it be salvaged to remove the adulterated matter.

W. M. JARDINE, *Secretary of Agriculture.*

5112. Adulteration of coconuts. U. S. v. 125 Sacks of Coconuts. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 21720. I. S. No. 12902-x. S. No. W-2110.)

On March 12, 1927, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying seizure and condemnation of 125 sacks of coconuts, remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped by A. H. Mascochea, from San Juan, P. R., December 15, 1926, and transported from the Territory of Porto Rico into the State of Washington, and charging adulteration in violation of the food and drugs act.

It was alleged in the libel that the article was adulterated, in that it consisted in whole or in part of a filthy, decomposed, or putrid vegetable substance.

On or about May 14, 1927, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

W. M. JARDINE, *Secretary of Agriculture.*

5113. Adulteration and misbranding of oysters. U. S. v. E. A. Smith & Co., Inc. Plea of guilty. Fine, \$25 and costs. (F. & D. No. 21573. I. S. Nos. 7243-x, 7244-x, 7781-x, 7782-x, 7783-x.)

On April 12, 1927, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against E. A. Smith & Co., Inc., a corporation, Baltimore, Md., alleging shipment by said company, in violation of the food and drugs act as amended, in various consignments, on or about November 22, 1926, from the State of Maryland into the States of North Dakota and Virginia, respectively, and on or about November 23, 1926, from the State of Maryland into the States of New York and Kentucky, respectively, of quantities of oysters, which were adulterated and misbranded. The article was labeled in part: "Minimum 1-Gallon Volume."

Adulteration of the article was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed therewith so as to cover and reduce and injuriously affect its quality, and had been substituted in part for oysters, which the said article purported to be.

Misbranding was alleged for the reason that the statement, "Minimum 1-Gallon Volume," borne on the cans containing the article, was false and misleading in that the said statement represented that the cans each contained 1 gallon of oysters, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that the said cans each contained 1 gallon of oysters, whereas each of said cans did not contain 1 gallon of oysters, but did contain a less amount. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On April 20, 1927, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$25 and costs.

W. M. JARDINE, *Secretary of Agriculture.*

15114. Adulteration of butter. U. S. v. Boise Valley Cooperative Creamery Co., Ltd. Tried to the court. Judgment for the Government. Fine, \$75. (F. & D. No. 19638. I. S. Nos. 11673-v, 11675-v, 11695-v, 11698-v.)

On July 30, 1926, the United States attorney for the District of Idaho, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Boise Valley Cooperative Creamery Co., a corporation, Boise, Idaho, alleging shipment by said company, in violation of the food and drugs act, in various consignments, on or about June 25, and 30, and August 6, 1923, respectively, from the State of Idaho into the State of California, of quantities of butter which was adulterated.

Adulteration of the article was alleged in the information for the reason that a substance deficient in milk fat, in that it contained less than 80 per cent by weight of milk fat, had been substituted for butter, to wit, a product which must contain not less than 80 per cent by weight of milk fat as prescribed by the act of March 4, 1923, which the said article purported to be.

On December 16, 1926, the case came on for hearing before the court. On December 23 the court handed down the following memorandum decision, finding the defendant company guilty and imposing a fine of \$25 on each of 3 counts, a total fine of \$75:

"In three counts the defendant is charged with violating the Pure Food Law, in that it shipped to Los Angeles, in interstate commerce, on three different occasions, butter, some of the packages of which contained an excess of moisture. Jury trial was waived, and the cause submitted to the court upon a very brief statement of facts, including the findings by Government agents. It is not controverted that some of the packages did contain a small excess percentage of water. The only defense suggested is that the defendant is a co-operative concern, and shipped the butter to another co-operative concern, made up of representatives of numerous local co-operative creameries in different parts of the country. The contention in substance is that the consignee was merely an agent of the consignor, thus bringing the case within the principle of *United States v. Sixty-five Cases Liquid Extracts*, 170 Fed. 449, 175 Fed. 1022; but I do not think the facts warrant the conclusion that the consignee was a mere agent. Both consignor and consignee are corporations, and when a shipment was made, such as is here involved, by the defendant to the Los Angeles concern, it was received and comingled with shipments from other concerns and sold upon the market in regular course. Payment for all shipments was made at the end of each week. There was no report of sales, and no accounting for any particular consignment. The butter was paid for at scheduled price, and defendant was never asked to return any of the money so paid and the consignee never accounted for any moneys received for butter in excess of the schedule price paid by it to the defendant. The mere fact that ultimately if any net profit was realized from the conduct of the business by the Los Angeles concern there was to be a ratable distribution of it to the customers of the concern, does not materially alter the case. I think the shipment of the butter by the defendant, its receipt by the Los Angeles concern, and payment therefor at schedule price, in effect constituted a sale. The shipment was not made by a principal to a mere agent, or by a mere agent to a principal, as was true in the case referred to. It will be necessary, therefore, to find the defendant guilty. As to the amount of punishment, the excess of moisture was very small, and there is no suggestion of any other violation of the law by the defendant, nor is there any evidence of bad faith